Supreme Court, U.S.
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No. 92-742

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

ARTHUR S. CURTIS,

Petitioner

vs.

THE ALUMINUM ASSOCIATION, INC.

AND

WOLF-LENKIN LIMITED PARTNERSHIP

Respondents

PETITION FOR A WRIT OF CERTIORARI

TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

KENNETH G. ROTH
COUNSEL OF RECORD
10306 Eaton Place, Suite 500
Fairfax, Virginia 22030
(703) 591-9700
Counsel for Respondent
Wolf-Lenkin Limited Partnership

QUESTIONS PRESENTED

1. Does this Court have jurisdiction to hear a matter local to the District of Columbia with no federal question involved?

2. Can and should this Court review whether the District of Columbia Court of Appeals improperly dismissed Petitioner Curtis' action by not applying the doctrine of equitable tolling to the District of Columbia's statute of limitations?

LIST OF ALL PARTIES, PARENT COMPANIES, AND NONWHOLLY OWNED SUBSIDIARIES

There are no parent companies or nonwholly owned subsidiaries and the caption of the case contains the name of all the parties.

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CITATIONS OF THE OPINIONS BELOW

Arthur S. Curtis v. Aluminum Association and Wolf-Lenkin Limited Partnership, Civil Action No. 89-3032, Memorandum Opinion dismissing case for lack of diversity jurisdiction, (D.C. DC April 10, 1991).

Arthur S. Curtis v. Aluminum Association and Wolf-Lenkin Limited Partnership, Civil Action No. 91-1912, order dismissing case, (D.C. Sup.Ct. March 18, 1991).

Arthur S. Curtis v. Aluminum Association and Wolf-Lenkin Limited Partnership, No. 91-592, opinion affirming lower court, (D.C. App. April 4, 1992).

Arthur S. Curtis v. Aluminum Association and Wolf-Lenkin Limited Partnership, denying motion to rehear en banc, CA1912-91 (D.C. App. August 5, 1992).

JURISDICTION

Respondent Wolf-Lenkin disagrees with Petitioner Curtis' invocation of 28 U.S.C. §1257 as a basis for jurisdiction. First, Respondent Wolf-Lenkin asserts that Curtis has failed to adequately allege jurisdiction, particularly by not stating and including a verbatim copy of the constitutional provision, treaty, statute, ordinance, or regulation involved in this matter. Second, Wolf-Lenkin asserts that there is no jurisdiction for this Court to hear this matter.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES

No constitutional provisions, treaties, statutes, ordinances, or regulations are involved in this matter.

CONCISE STATEMENT OF THE CASE

On November 3, 1989, Arthur Curtis filed an action for damages against the Aluminum Association and Wolf-Lenkin Limited Partnership in the United States District Court for the District of Columbia. This action was predicated

upon the fact that water damage from a building in which he rented caused damage to his personal property. The Aluminum Association sublet the room to Curtis and Wolf-Lenkin owned the building.

This action was dismissed for lack of complete diversity on April 10, 1991. Petition, at A-23. However, Curtis filed a similar action in the District of Columbia Superior Court on February 13, 1991. This action was dismissed on March 18, 1991, due to Curtis' failure to file within the District of Columbia's three year statute of limitations set forth in D.C. Code Ann. §12-301 (1981).

Curtis appealed to the District of Columbia Court of Appeals which affirmed the lower court's decision on April 24, 1992. Petition, at A-2. Curtis filed for a rehearing or rehearing en banc which was denied on August 5, 1992. Petition, at A-21.

Curtis brings this petition for writ of certiorari before this Court, seeking to reverse the decision of the D.C. Court of Appeals and to

remand his case to the trial docket of the D.C. Superior Court for trial on the merits.

SUMMARY OF ARGUMENT

Respondent Wolf-Lenkin Limited Partnership (hereinafter "Wolf-Lenkin") opposes Petitioner Arthur S. Curtis' (hereinafter "Curtis") petition on two grounds; a) Curtis has failed to meet the standards and requirements of Rules 10 and 14 of the Rules of the Supreme Court of the United States, and b) this Court has no jurisdiction to review the final judgment entered in this matter by the D.C. Court of Appeals.

Supreme Court Rule 10 specifies certain criteria that, although not controlling, are important factors considered by this Court when deciding whether or not to grant a petition for a writ of certiorari. Rule 14.1(j) further states that a direct and concise argument concerning these issues must be addressed in the petition. However, none of the enumerated considerations are addressed by Curtis because, in fact, they do not exist in the instant case.

Nor does Curtis meet the requirements of Supreme Court Rule 14 which identifies specific information that shall be contained in a petition for writ of certiorari. In particular, he fails to comply with Rule 14.1(e) and Rule 14.1(f) concerning the jurisdiction of this Court, and Rule 14.1(h) concerning at what stage of the proceedings a federal question was raised.

While Rules 14.1(e) and (f) require a concise statement of jurisdiction and a verbatim copy of the constitutional provision, treaty, statute, ordinance, or regulation in question, none are provided, either in the body of the petition or the appendix. Instead, Curtis simply asserts jurisdiction under 28 U.S.C. §1257(3) but goes no further in identifying what federal question under 28 U.S.C. §1257(3) is at issue. Furthermore, 28 U.S.C. §1257 was amended in 1988, well before this petition was filed, and currently consists of only two subsections, §1257(a) and §1257(b); there presently exists no 28 U.S.C. §1257(3). Curtis has also failed to comply with Supreme Court Rule 14.1(h) requiring

him to state at what stage in the proceedings the federal question sought to be reviewed was raised and how the lower courts treated the issue. This failure may be unavoidable since a federal question has never been raised.

Additionally, this Court lacks jurisdiction to review the final order entered by the D.C. Court of Appeals in this instance. This is a petition for review from a final order of the District of Columbia Court of Appeals, dismissing the case for failure to meet the District of Columbia's three year statute of limitations found in D.C. Code Ann. §12-301 (1981). For purposes of granting a writ of certiorari, the D.C. Court of Appeals is considered by 28 U.S.C. §1257(b) as the highest court of a state and not a federal court, therefore, some substantial federal question must exist and have been raised in the lower court for this Court to have jurisdiction. However, contrary to Petitioner's arguments, the issue is purely local to the District of Columbia and merely concerns whether the District of Columbia will recognize the doctrine of equitable

tolling when applying its statute of limitations to a decidedly local action.

The statutes and issues involved are all local to the District of Columbia and will have no national or federal impact. Petitioner has failed to meet the requirements of the Supreme Court Rules for filing his petition. For these reasons Respondent Wolf-Lenkin asks that this petition for writ of certiorari be denied.

ARGUMENT

I. IN SUBMITTING HIS PETITION, PETITIONER HAS FAILED TO MEET THE REQUIREMENTS OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

A. Curtis fails to make the required jurisdictional allegations in his petition.

In his petition for writ of certiorari, Petitioner Curtis alleges the jurisdiction of this Court under 28 U.S.C. §1257. That statute provides in part that:

> Final judgments or decrees rendered by the highest court of a state . . . may be reviewed . . . where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the

> Constitution, treaties, or laws of the United States . . . .

In clear violation of 28 U.S.C. §1257 and Rules 14.1(e)(iv) and 14.1(f), Petitioner Curtis fails to state the constitutional provision, treaty, statute, ordinance, or regulation in question which would provide this Court jurisdiction under 28 U.S.C. §1257. Rule 14.1(f) further specifies that such provision or statute must be set out verbatim either at the beginning of the petition or in the appendix. Not only does the petition lack such a verbatim copy either in the body or the appendix, it is completely devoid of any argument which raises the validity of any federal law or provision. The reason for this is simple; Curtis never raised a federal question in the lower courts because no federal question is involved.

It is also important to note that 28 U.S.C. §1257 was amended in 1988 and now consists of only subsections (a) and (b). The old statute cited by Curtis contained provisions for mandatory jurisdiction which no longer exist. As is evident by the date, the amendment was made

well before the filing of this petition and, if Curtis wishes to attempt to invoke this Court's jurisdiction for review, a statute which is currently in effect should be alleged.

B. Curtis fails to address any of the criteria of Rule 10.

Curtis fails to meet or address any of the criteria of Rule 10. The criteria of Rule 10, "while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered." Rule 10.1 of the Rules of the Supreme Court of the United States. Further, Rule 14.1(k) requires a "direct and concise argument amplifying the reasons relied on for the allowance of the writ" and specifically references Rule 10.

The first consideration enumerated, Rule 10.1(a), is inapplicable because the present appeal does not concern a decision of a United States Court of Appeals. Likewise, neither are the last two criteria which are enumerated, Rules 10.1(b) and 10.1(c), applicable because the District of Columbia Court of Appeals did not

decide or even address a federal question, let alone one that has not been decided by this Court.

Curtis' petition lacks any reference to the criteria which this Court will consider when deciding whether to grant a writ of certiorari. This failure to address these important criteria, compounded with the fact that the present matter does not meet the criteria of Rule 10, weigh heavily in denying the petition.

C. Curtis has not raised a federal question at any stage of the proceedings.

Supreme Court Rule 14.1(h) requires that, when review of a state court judgment is being sought, which a judgment from the D.C. Court of Appeals is considered, 28 U.S.C. §1257(b), the petitioner must include in his petition the stage of the proceedings at which the federal question sought to be reviewed was raised, the method or manner of raising them and the way in which they were passed upon by those courts.

No such averment is made by Curtis in his

petition. Further, the opinion of the D.C. Court of Appeals found in the appendix of the petition clearly reveals that no federal question was ever raised. The issue before that court, and the sole issue which it ruled upon, was limited to the District of Columbia statute of limitations and the application of equitable tolling to a District of Columbia cause of action.

For failing to comply with the explicit Rules of the Supreme Court, including Supreme Court Rules 10 and 14, Curtis' petition for writ of certiorari should be denied.

II. THIS COURT LACKS JURISDICTION TO REVIEW THE JUDGMENT OF THE D.C. COURT OF APPEALS

A. This matter does not involve a federal question.

Curtis must do more to invoke this Court's jurisdiction than to simply cite 28 U.S.C. §1257. He must identify a treaty or statute of the United States, the validity of which was drawn into question by the decision of the District of Columbia Court of Appeals, or a District of Columbia law whose validity is challenged as

being repugnant to a constitutional provision or federal statute, law, or regulation. 28 U.S.C. §1257(a). However, such an identification is conspicuously absent from Curtis' petition because it is the District of Columbia's statute of limitations found at D.C. Code Ann. §12-301 (1981) and the application of equitable tolling to this code section, not any federal question, which is the subject of Curtis' petition.

Assuming arguendo that Curtis' argument does raise the specter of some federal question, the application of equitable tolling to the District of Columbia's statute of limitations is surely not substantial enough to warrant this Court's jurisdiction. The lack of a substantial federal question deprives this Court of jurisdiction to review a state court judgment. In Duncan v. Tennessee, 405 U.S. 127 (1972), this Court dismissed a writ as having been improvidently granted due to lack of a substantial federal question. (See also, Palmer Oil Corporation, et al. v. Amerada Petroleum Corporation, et al, 343 U.S. 390 (1952), where an appeal was dismissed

for failure to raise any substantial federal questions).

B. The D.C. Court of Appeals' decision is a "state" judgment resting on "state" grounds.

The District of Columbia and its court system are an interesting hybrid of state and federal interests. While the District of Columbia is not technically a state, its local court system was reformed in 1970 by the District of Columbia Court Reform and Criminal Procedure Act so as to establish "a Federal-State court system in the District of Columbia analogous to court systems in the several States." Key v. Doyle, 434 U.S. 59 (1977), citing, H.R.Rep. No. 91-907, p.35 (1970). The purpose of this act was to set up a court system in the District of Columbia with the responsibility of trying local controversies arising under local law. Key v. Doyle, at 434 U.S. 67.

This is precisely the situation which Curtis presents. The local District of Columbia court system dismissed Curtis' action, based upon local

law with no federal impact or concern, for failing to comply with the local District of Columbia statute of limitations.

"[T]his Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds." Herb v. Pitcairn, 324 U.S. 117, 125 (1954). In that same opinion, the Court further stated that its "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." Herb v. Pitcairn, at 324 U.S. 125-126.

No such federal rights were incorrectly adjudged by the D.C. Court of Appeals in the present matter. This is evident by the absence of a federal question. The lower court simply dismissed Curtis' action for failing to comply with the applicable statute of limitations. To the extent that Curtis complains of the dismissal from the federal court action for lack of diversity, that is an issue which he is presently appealing the U.S. Court of Appeals for the District of Columbia Circuit.

III. CURTIS HAS FAILED TO IDENTIFY ANY VALID GROUND FOR THIS COURT TO INTERVENE IN THE LOCAL COURTS SYSTEM OF THE DISTRICT OF COLUMBIA

A. The cases cited by Curtis in his petition involve federal questions where the Supreme Court unquestionably had jurisdiction.

In his petition, Curtis cites several cases in support of this Court having jurisdiction and applying equitable tolling to the present matter. (See Petition for Writ of Certiorari, Reasons for Granting Writ, pp. 13-20). However, none of those cases involve the Supreme Court having jurisdiction to review a state statute of limitations where the parties or causes of action were clearly of a local concern.

In Hanger v. Abbott, 73 U.S. 532 (1868), the Supreme Court tolled the statute of limitations because the Civil War effectively closed the courts of rebellious states to individuals of states loyal to the Union. No such drastic situation exists in the present so as to effect a litigant's accessibility to a court to warrant the Supreme Court's intervention. To the

contrary, Curtis had access to the court of his choice. Burnett v. New York Central R. Co., 380 U.S. 424 (1965), a matter brought in the United States District Court for the Southern District of Ohio, concerned the Federal Employer's Liability Act and a federal statute of limitations, federal laws and provisions clearly within the jurisdiction of the Supreme Court. Bowen v. City of New York, 476 U.S. 467 (1986), brought in the United States District Court for the Eastern District of New York, concerned a class action suit brought against the Secretary of Health and Human Services by social security claimants. This case not only concerned federal law, one party was the Social Security Administration of the United States. Both Burnett and Bowen required the Supreme Court to interpret federal statutes of limitations and whether Congress intended for them to be tolled under certain circumstances. Unlike the present situation which concerns a statute of limitations enacted by the District of Columbia, interpretations of federal statutes of

limitations are undoubtedly within the Supreme Court's jurisdiction.

Curtis also cites in support of his position Addison v. State of California, 578 P.2d 94 (Cal. 1978). In this case, it was the California Supreme Court, interpreting California law, that was free to apply the doctrine of equitable tolling to California's statute of limitations as it applied to the California Tort Claims Act. Just as California was free to apply the doctrine to its own law, so too is the D.C. Court of Appeals free to decline to apply the doctrine to the laws and procedures of actions within the District of Columbia.

B. Curtis' argument that the D.C. Court of Appeals is a federal court is without merit.

Curtis concludes his petition by arguing that the D.C. Court of Appeals is a federal court and that the Supreme Court should hear this matter as it has the ultimate responsibility for administration of justice in the federal courts. Petition, at p.24. However, this assertion is

contradictory to Curtis' invocation of 28 U.S.C. §1257 which clearly states that, for the purposes of granting writs of certiorari, the D.C. Court of Appeals is considered the highest court of a state.

This Court has also previously stated that review of a decision from the D.C. Court of Appeals, concerning a law of exclusively local application, is no different than review of any other similar state court judgment. Key v. Doyle, at 434 U.S. 68. That method of review is by means of writ of certiorari pursuant to 28 U.S.C. §1257, not pursuant to some administrative function as Curtis asserts.

Once again, Curtis makes no allegation of jurisdiction beyond citing 28 U.S.C. §1257. If he is asking this Court to consider jurisdiction on some other ground, he has failed to adequately do so as required by Rule 14.1(e)(iv). Therefore, this Court should not consider any other jurisdictional basis beyond Curtis' deficient allegation of jurisdiction based upon 28 U.S.C. §1257.

For failing to identify any basis upon which this Court may take jurisdiction to review this matter and reverse the D.C. Court of Appeals' decision to not apply equitable tolling, Curtis' petition should be denied.

CONCLUSION AND RELIEF

Curtis has clearly failed to comply with the explicit rules set forth for petitioning this Court for a writ of certiorari. First, he has failed to meet any of the criteria set forth in Rule 10 of the Supreme Court Rules. Second, he has failed to adequately allege and invoke this Court's jurisdiction as required by Rule 14.1. Third, he has failed, pursuant to Rule 14.1(h), to identify the federal question at issue and at what stage in the proceedings it was raised.

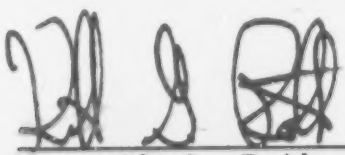
Further, this matter concerns no federal question but instead addresses the freedom of the D.C. Court of Appeals in deciding whether to apply the doctrine of equitable tolling to a District of Columbia statute of limitations as it applies to a purely local action. Curtis'

petition relies entirely on cases clearly involving federal questions where the Supreme Court clearly had jurisdiction or, as in Addison, concerned another state's supreme court deciding an issue based upon that state's law.

For failing to comply with the rules governing petitions for writs of certiorari, this Court should deny Curtis' petition pursuant to Supreme Court Rules 14.2 and 14.5. More importantly, because no federal question exists to support this Court's jurisdiction, the petition must be denied.

Respectfully Submitted,

Montedonico, Hamilton & Altman, P.C.



Kenneth G. Roth
Counsel of Record
10306 Eaton Place
Suite 500
Fairfax, Virginia 22030
(703) 597-9700
Counsel for Respondent
Wolf-Lenkin Limited
Partnership